

JEAN R. URANGA
Hearing Officer
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BEFORE THE BOARD OF SOCIAL WORK EXAMINERS

STATE OF IDAHO

In the Matter of the)	
License to Practice)	Case No. SW-564-89-1
Social Work of:)	
)	HEARING OFFICER'S FINDINGS
HUGH HOWARD BATES,)	OF FACT, CONCLUSIONS OF LAW
)	AND PROPOSED ORDER
Respondent.)	

THIS MATTER Came on for hearing on February 26, 1990, in Pocatello, Idaho, before Jean R. Uranga, designated Hearing Officer. The Board of Social Work Examiners was represented by Priscilla Nielson, Deputy Attorney General. The Respondent, Hugh Bates, appeared in person and by and through his attorney of record, Brent Morgan. Both parties submitted evidence.

The proceedings were tape recorded. At the close of the hearing, it was agreed that the Bureau of Occupational Licenses would prepare a transcript which would be provided to both counsel for their use in preparing written closing arguments. The parties were given thirty (30) days from receipt of the transcript for their first brief and fifteen (15) to respond to the other party's brief.

By letter dated February 27, 1990, the tapes were hand-

delivered to Marvin Gregersen, Chief of the Bureau of Occupational Licenses, by the Hearing Officer with a request that the tapes be transcribed as soon as possible. By letter dated April 10, 1990, from Priscilla Nielson to Brent Morgan, Ms. Nielson advised Mr. Morgan that Marv Gregersen found portions of the testimony were garbled and unintelligible and that somehow some of the tapes had been misplaced. The parties were apparently discussing options of whether to have a new hearing or prepare Stipulations.

When the Hearing Officer did not hear anything from the parties, in June, 1990, the Hearing Officer requested that the original tapes and the transcript which had been prepared be delivered to her office for review. The office staff for the Hearing Officer listened to the tapes, in conjunction with the transcript which the Bureau had prepared, and found that, in fact, the tapes were much more intelligible than had previously been thought. Corrections were made to the transcript and resubmitted to the Bureau for completion. The revised transcript was submitted to the parties July 31, 1990, and the various briefing by the parties was completed and the final Brief received by the Hearing Officer September 4, 1990.

However, apparently portions of Karen Leaman's hearing testimony were still omitted from the transcript and the Hearing Officer did not become aware of that fact until reviewing the Briefs in preparation for this decision. At that point, both parties agreed to the filing of an Affidavit of Karen Leaman covering the portions of the transcript which were supposedly lost. While preparing this decision, the Hearing Officer further investi-

gated the matter and found that, in fact, Side B of Tape 1 does include all of Karen Leaman's testimony and had never been transcribed. Consequently, in preparing this decision, the Hearing Officer did listen to and rely upon the testimony under oath of Karen Leaman. Side B of Tape 1 also included testimony of Mary Beth Alder, which was considered by the Hearing Officer.

After the hearing and prior to briefing, the Board and the Respondent entered into an agreement dismissing the count of the Amended Complaint related to Laura Ellis. Therefore, the issues to be decided are limited to two issues:

1. Whether Respondent violated Ethical Rule 2.i by reading aloud from a patient file to his date and not safeguarding client confidentiality; and
2. Whether Respondent violated Ethical Rule 1.h by reading aloud sexually explicit material from a client file for personal reasons and thereby exploiting the professional relationship of a client.

FINDINGS OF FACT

The evidence establishes that Hugh Bates met Karen Leaman in May, 1989. At that time, Ms. Leaman worked for Medical Mart in Pocatello, Idaho. As part of her employment, she delivered a wheelchair to the Pocatello Regional Medical Center and Mr. Bates, who worked at the hospital, signed for the wheelchair. A few days after the delivery, Mr. Bates called Ms. Leaman at her employment and asked her out. After a few phone calls back and forth, Ms. Leaman agreed to go out with Mr. Bates on Friday, May 26, 1989, the Friday of Memorial Day weekend.

Both Mr. Bates and Ms. Leaman agree that he was late in picking her up and he was still dressed in shorts and a tank top. Consequently, he went by Ms. Leaman's house and she agreed to go to his home with him while he changed. Thereafter, the parties went to the Shanghai Restaurant for dinner. After dinner, they agreed to go to Garfield's, a bar which had live music. They left Garfield's about midnight and went to Ms. Leaman's home. On the way to her home, they stopped and purchased beer. While at Ms. Leaman's home, they also smoked some marijuana.

At this point, the testimony of Mr. Bates and Ms. Leaman becomes quite divergent.

Ms. Leaman testified that she thought Mr. Bates was going to show her some slides about a camping trip and that he went out to his car and returned with a manila envelope, rather than slides and a projector. She also testified that she and Mr. Bates had discussed their jobs during dinner and that she understood the difference between a psychiatrist and a social worker. Ms. Leaman explained that Mr. Bates then opened the manila envelope and told her: "This is confidential stuff and technically I should not be showing you this." Apparently, Mr. Bates had two patient files, but he only read from one, and only the Discharge Summary, not the whole file of that patient, was admitted in evidence. According to Ms. Leaman, Mr. Bates identified the patient by name and read parts of the patient file to Ms. Leaman, including information that the patient had been molested by her grandfather and had been raped by a 16-year-old babysitter. Ms. Leaman stated that Mr. Bates

asked her whether his reading of the file "turned her on" and she told him it made her sick and asked him to stop.

Mr. Bates then began making sexual advances toward Ms. Leaman, which she testified she resisted. She testified that he made other comments to her regarding the breeding of a horse which he said had been a great sexual experience for him to watch. Ms. Leaman stated that she was becoming very frightened and scared. She did not have a telephone or a lock on her door. She repeatedly asked Mr. Bates to leave and he refused to do so. In an effort to calm her down, Mr. Bates proposed that he give her a back rub. She stated that he again began making sexual advances and began masturbating. She stated that she left the bedroom and sat on the couch and that he came out into the living room with his pants off. Ms. Leaman related that Mr. Bates then began rubbing his hand on her dog's penis. He finally complied with her request to leave her home.

When he left, Mr. Bates left the patient files and she was fearful that he would come back to get them. She had a friend stay with her the rest of the weekend. On Saturday, she had her employer lock up the files in the office safe for the weekend and on the first working day after Memorial Day weekend, she took the files to Pocatello Regional Medical Center.

Mr. Bates admitted that he had read to Ms. Leaman from the files, but stated that he read only a portion of the files for the purpose of explaining to her what his job was. He further testified that he never revealed the patient's name. Mr. Bates indicated that it was his understanding that information was confidential only if it revealed the identity of the patient. He

vehemently denied making "unwanted" sexual advances, but he did indicate that he was getting mixed signals from Ms. Leaman regarding her interest in sexual contact with him. Mr. Bates testified that the files were in his possession because they had been delivered to him by a psychiatrist at Aspen Crest with whom he had worked. He apparently did not trust the filing system and indicated that he regularly takes files home with him because of that.

Because of the wide divergence in the testimony of the parties, it becomes necessary to review the credibility of the testimony. During her testimony, Ms. Leaman was genuinely distressed and upset about relating what happened. While some of her description of what happened seems unusual, it does not seem implausible. Mr. Bates' explanations, on the other hand, appear less credible. He indicated that he used the file only for the purpose of explaining to Ms. Leaman the difference between what he does and what a psychiatrist does. However, the portions of the file which Mr. Bates admitted he read do not in any way assist anyone in understanding the difference between a social worker and a psychiatrist. In fact, Exhibit A contains only one very brief reference to the fact that Mr. Bates was involved in one session of family therapy. In addition, Mr. Bates readily admits that he made no effort to verbally explain the distinction without use of the file. Further, Mr. Bates indicated that the nature of his employment was never discussed during dinner. However, it is implausible that two people, on a first date, would not generally

discuss the nature of their work in the process of getting acquainted.

Other evidence supports the finding that Ms. Leaman's description of the events is more credible.

Mary Beth Alder, an employee at Pocatello Regional Medical Center, testified that she met with Karen Leaman and Ms. Leaman's employer when they brought her the patient files which had been left at Ms. Leaman's home. Ms. Alder stated she then met with Mr. Bates who admitted to Ms. Alder that he had shared information from the files with Ms. Leaman in an effort to help her understand his job. He also admitted that he did leave the files at Ms. Leaman's home. Ms. Alder testified that such use of files is totally inappropriate and a breach of confidentiality.

Joseph Dills, Mr. Bates' supervisor at Pocatello Regional Medical Center, was also involved in the conference with Ms. Alder and Mr. Bates. His testimony was that Mr. Bates admitted reading the files to Ms. Leaman and had offered her the option of reading the files herself. Mr. Bates was suspended and later terminated from his employment. Mr. Dills, a licensed social worker, testified that it is totally inappropriate for a social worker to take patient files with one on a date and to read from those files. He further testified that confidential information includes anything which identifies that person as having a relationship with a therapist and which includes anything which could be deemed sensitive information about a patient.

The evidence further indicates that Mr. Bates delivered a letter to Ms. Leaman dated May 31, 1989. (Exhibit B.) In that

letter, Mr. Bates admits that he left "confidential information re. patients." He also threatened to talk to Ms. Leaman's employer and threatened her with possible loss of her job if she did not return the documents.

It is also interesting to note that the files themselves are stamped on each page with a statement that the files are confidential. While the stamped disclaimer is not particularly legible, it does state:

This information has been disclosed to you
from records whose confidentiality is pro-
tected by Federal law, Federal Regulation 1142
C, Part 2"

The Hearing Officer finds that Mr. Bates did read sexually explicit, confidential patient information from Exhibit A to Ms. Leaman for personal reasons and thereby breached the client's confidentiality and exploited his professional relationship with that client.

CONCLUSIONS OF LAW

Ethical Rule 2.i requires a social worker to safeguard information given by clients in providing client services. That ethical rule further requires a social worker to obtain the client's informed written consent "before releasing confidential information from the setting or facility" except for certain limited situations not applicable here. This rule requires a social worker to safeguard all information given by clients, not just information which identifies the client.

Mr. Bates argues that he cannot be found to have violated Rule 2.i because the patient involved did not testify that she objected

to disclosure of the information. Mr. Bates further argues that since Ms. Leaman was not a client, she has no cause of action for the alleged violation.

The Complaint in this action was filed by the Bureau of Occupational Licenses, not Ms. Leaman. Ms. Leaman appeared only as a witness, not as a party. Consequently, this action is not governed by whether or not Ms. Leaman was a client or had a private cause of action against Mr. Bates. Rule A(3)(d) of the Rules of Procedure of the Bureau of Occupational Licenses allows the Bureau itself to investigate and file complaints regarding alleged violations. It is the Board's duty to pursue violations.

Mr. Bates further argues that no evidence was presented indicating that the actual patient whose file was read objected to disclosure of the information. However, Rule 2.1 clearly states that the information may not be disclosed unless the social worker obtains the client's informed written consent. It is the burden of Mr. Bates to prove he has received such informed written consent before releasing the information.

Mr. Bates further argues that the information is not confidential unless it identifies the person. He cites various cases in support of the general proposition that, for information to be privileged, the patient must intend that it be privileged and that it be a part of treatment. These cases follow the general rule set forth in Idaho Rules of Evidence, Rule 518, which by court rule defines the social worker/client privilege. Rule 518(a)(3), IRE, states:

A communication is "confidential" if not intended to be disclosed to third persons except persons present to further the interest of the client in the consultation or interview, or persons reasonably necessary to the transmission of the communication, or persons who are participating in the rendition of social services to the client under the direction of the licensed social worker, including members of the client's family.

This Court Rule makes it clear that a communication is confidential if it is not intended to be disclosed, whether or not it identifies the patient.

Regardless of which portions of the file Mr. Bates read, the mere fact that he left the files at the home of Karen Leaman gives rise to a violation of the Act.

Mr. Bates is also accused of violating Rule 1.h, which states:

A social worker shall not exploit their professional relationships with clients (or former clients), supervisees, supervisors, students, employees, or research participants, sexually or otherwise.

The Hearing Officer concludes that Mr. Bates did exploit information obtained from a client during a professional relationship for his own sexual purposes.

PROPOSED ORDER

While the Hearing Officer concludes that Mr. Bates has violated these ethical rules, the more difficult consideration becomes appropriate sanctions. Idaho Code §54-3211 provides that the Board may refuse to renew, suspend or revoke a license upon proof that a person has engaged in unprofessional conduct. "Unprofessional conduct" is defined to include being found guilty

of unprofessional conduct by the rules established by the Board. It appears that the only available sanction would be suspension or revocation. No evidence was presented to indicate that this was a repeated or ongoing problem by Mr. Bates. However, his conduct and violations should not go without some sanction. Consequently, the Hearing Officer recommends that the Board of Social Work Examiners consider imposition of a short period of suspension.

RESPECTFULLY SUBMITTED This 9th day of October, 1990.

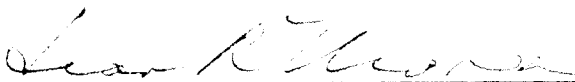

JEAN R. URANGA

CERTIFICATE OF MAILING

I HEREBY CERTIFY That on this 9th day of October, 1990, I served true and correct copies of the foregoing HEARING OFFICER'S FINDINGS OF FACT, CONCLUSIONS OF LAW AND PROPOSED ORDER by depositing copies thereof in the United States mail, postage prepaid, in envelopes addressed to:

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